

In the High Court of Judicature at Madras

Dated: 20.11.2007

Coram:

The Honourable Mr. Justice P. Jyothimani

W.P.No.32054 of 2007
& M.P.No.1 of 2007

Nafisudeen

.. Petitioner

vs.

Tamil Nadu Wakf Board,
Rep. by its Chief Executive Officer,
No.3, Santhome High Road,
Chennai-4.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified calling for the records of the respondent in their proceedings Na.Ka.No.16498/Aa1/03/Thu.Kudi, dated 11.9.2007 and quash the same.

For petitioner : Mr.M.Liagat Ali

For respondent : Mr.S,F.Mohamed Yousuf

Order

Heard learned counsel appearing for the petitioner and learned Standing Counsel appearing for the respondent-Tamil Nadu Wakf Board.

2. This Writ Petition is filed challenging the order of the respondent-Wakf Board, dated 11.9.2007, by which the petitioner who was acting as Muthavalli of Kattu Magadoom Pallivasal Dargah, Veerapandiapattinam Village, Tiruchendur Taluk (V.O.C. District) was removed on the basis of certain charges.

3. The case of the petitioner is that the said Dargah is a notified "Wakf". According to the petitioner, the said Wakf (Dargah) was under the management of his father's elder brother Magadoom Mohideen of Kayamozhi Village and after his demise, it was managed by his descendants. The said Late Magadoom Mohideen Maraicaair had purchased 8 acres in S.R.No.329/1 of Veerapandi Village and that the property became part and parcel of the said Dargah, which was constituted by the family. As per the trust

deed executed by the said Magadoom Mohideen Maraicaair, the property was dedicated on the basis that the management of the Wakf should be by the descendants. The said Wakf was confirmed by the Special Officer of the Tamil Nadu Wakf Board, recognising the petitioner as Muthavalli of the said Wakf (Dargah). Appeal filed by third parties was also dismissed by the Government, and therefore, ultimately, the petitioner was confirmed to be the hereditary Muthavalli.

4. When a suit was filed by one Hajee Kulam Mohammed Thamby in O.S.No.6455 of 1993 before the City Civil Court, for a declaration against the above said order of the Special Officer of the Tamil Nadu Wakf, as also the confirmation order passed by the Government in favour of the petitioner, the City Civil Court dismissed the said suit by judgment and decree dated 16.11.1998, against which, the appeal filed was also dismissed in A.S.No.174 of 1999 by judgment and decree dated 26.9.2003.

5. It is the case of the petitioner that at the instigation of the Chairman, namely Hyder Ali, the impugned order dated 11.9.2007 came to be passed by the respondent-Wakf Board, which is challenged on various grounds, including the merits of the various charges which are framed against the petitioner (Muthavalli).

6. Mr.S.F.Mohamed Yousuf, learned Standing Counsel appearing for the respondent-Wakf Board, as per the direction of this Court, produced the Resolution maintained in respect of the Wakf. This was due to the reason that learned counsel appearing for the petitioner has raised an objection about the validity of the impugned order passed by the Wakf Board on the basis that the required number of members of the Wakf Board have not participated in the meeting and have not signed in the Resolution.

7. On a perusal of the Resolution which was submitted by the learned Standing Counsel appearing for the respondent-Wakf Board, I am fully satisfied that the number of persons who have participated in the meeting held on 26.6.2007, when the impugned decision was taken by the Wakf Board, was nine, who have also signed on the Minutes Book. The Resolution passed on 26.6.2007 by the Wakf Board also deals with each and every one of the charges and also the explanation submitted by the petitioner to the respective charges.

8. The charges framed against the petitioner are that the petitioner has not brought into account of the Wakf the number of trees standing in the properties, that the petitioner has cut away 50 Palmirah trees without prior permission of the Wakf

Board, that he has sold 10 trees to one Arokiaraj without the permission of the Wakf Board and he has not brought the amount of the sale consideration into the Wakf Account, that he has not paid the electricity charges, which resulted in disconnection of the electricity, that he has not put up fencing in respect of Wakf lands, and that the petitioner has not rendered the accounts for the income of the Wakf from 1996-1997 to 2003-2004, apart from not paying the contribution payable to the Wakf Board.

9. It is seen that in the explanation submitted by the petitioner to the Wakf Board on 17.1.2007, he has in categorical terms stated that the Palmirah trees have become very old and there was no yield, and therefore, he has cut away 50 trees at the rate of Rs.500/- each and obtained Rs.10,000/- as advance amount and his explanation for not obtaining permission from the Wakf Board was that he had no time to get such a permission before the agreement entered into for the purpose of cutting and selling of the said Palmirah trees.

10. The Wakf Board has taken the said explanation into consideration, which clearly admits the charges levelled against the petitioner and passed the impugned order. There is a specific condition while the petitioner was appointed as a Muthavalli that the petitioner should render true and proper account, apart from the payment of various amounts to the Wakf Board. Apart from this, it is also considering the fact that from 1996-1997 till 2006-2007, the petitioner has not submitted the accounts to the Wakf Board, the impugned order came to be passed.

11. Mr.M.Liagat Ali, learned counsel appearing for the petitioner would submit that even though it is true that the Wakf Board has considered on merits all the charges, it is actually an ex-parte order, since the petitioner was not given an opportunity to participate in the enquiry. He would plead that the property is the property of the family of the petitioner and his forefathers have created the Durgah as such, and therefore, if sufficient opportunity is given, the petitioner will be able to defend himself in a proper manner and therefore, according to him, this ex-parte order cannot be put against the petitioner for the purpose of coming to a conclusion against him, which is grave in nature.

12. On the other hand, a reference to the impugned order shows that the Wakf Board has taken various steps and gave notice on various dates to the petitioner to appear for the enquiry. It is seen that the notices were given to the petitioner for the enquiry held on 12.10.2004, 20.4.2005, 27.5.2005, 7.12.2005, 30.01.2006 and 5.4.2006 and for all these hearings, even after receiving the notice, the petitioner has not chosen to appear for the enquiry. It was ultimately, the enquiry was posted to 26.6.2007, stating that the petitioner should appear on that date for enquiry. Even on that date, the petitioner has not chosen to appear.

13. In view of the above said factual position, which is not in dispute, I do not think that there is any substance in the contention of the petitioner that the petitioner was not given adequate opportunity. The concept of natural justice requires that opportunity be given to a party and if a party fails to utilise the opportunity, he cannot find refuge under the concept of natural justice.

14. However, it is seen that the petitioner has in fact given explanation to the charges and in the explanation, atleast, in respect of one charge, he has admitted that he has not obtained prior permission from the Wakf Board, which is no doubt the condition with which the petitioner was appointed as a Muthavalli.

15. It is submitted by the learned counsel appearing for the respondent-Wakf Board that as against the impugned order, the petitioner has always got a right of appeal under the provisions of the Wakf Act, 1995 and the Rules framed under the said Act.

16. When a remedy of appeal is available, it is not as if the petitioner is left in lurch and he cannot be expected to rush to this Court under Article 226 of the Constitution of India.

17. In view of the above said facts, I am of the considered view that there is absolutely nothing to interfere in this case. The petitioner is not entitled for any remedy.

18. The Writ Petition fails and the same is disposed of, making it clear that it is open for the petitioner to avail the appellate remedy under the provisions of the Wakf Act, 1995 and the Rules framed thereunder, and as and when such appeal is filed by the petitioner, within a period of 15 days from the

date of receipt of a copy of this order, the appellate authority under the Wakf Act, 1995 and the Rules framed thereunder, shall take the appeal on file, and decide the same on merits, and in accordance with law. It is open for the petitioner to raise all the defences available to him. No costs. The Miscellaneous Petition is closed.

Cs

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copy to

The Chief Executive Officer,
The Tamil Nadu Wakf Board,
No.3, Santhome High Road,
Chennai-4.

- 1 cc to Mr. M. Liagat Ali, Advocate SR No. 68303

KS (CO)

- SR/28.11.2007

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